IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7525 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRAKASH ALIAS PAKIYO PANDURANG MARATHA

Versus

COMMISSIONER OF POLICE AHMEDABAD

Appearance:

MR SATISH R PATEL for Petitioner

V.B. GHARANIYA LD. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 25/02/2000

ORAL JUDGEMENT

1. This special civil application is directed against the order dtd. 21st July, 1999, passed by the Police Commissioner, Ahmedabad City. The petitioner has been detained under the provisions of Gujarat Prevention of Anti-social Activities Act (`PASA Act' for short),

1985 and he has detained in jail at Rajkot since the date of the order of detention.

2. The grounds of detention enclosed with the detention order show that 7 cases were registered against the petitioner under the Prohibition Act. Unauthorised liquor have been found from his possession in these case raising from 10 to 218 liters. The detaining authority has found that the petitioner is a bootlegger and is engaged in the business of unauthorised liquor and he is going on with anti-social activities. Incident dtd. 26th July, 1999 and 11th July, 1999 have also been referred to about which the witnesses have stated against the petitioner's activities. It is also mentioned by the detaining authority that the witnesses are afraied to come out openly against the petitioner. Sec.9(2) of the Act has been invoked. It has also been mentioned that at the time when the detention order was passed, the petitioner was in judicial custody and had been released on bail in another case, and in case of release on bail, in other case he would continue with his anti-social activities, and therefore, it was necessary to detain him.

3. Having heard the learned advocate for the petitioner and learned A.G.P., this Court finds that it is not a case of breach of public order. At the most the allegation as have been levelled against the petitioner, as per the grounds of detention, even if taken to be true, would only make out a case of breach of law and order. In absence of ingredient with regard to the breach of public order, the detention order as has been passed, in the instant case cannot be sustained in the eye of law. The impugned order dtd. 21st July, 1999, passed by the Police Commissioner, Ahmedabad City, is hereby quashed and set aside. The petitioner-detenu namely Prakash alias Pakiyo Pandurang Maratha is ordered to be released forthwith, if not required to be detained under any other detention order or in any other criminal case. This Special Civil Application is allowed. Rule is made absolute.

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